



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R02-OAR-2021-0747; FRL-9241-01-R2]

### Outer Continental Shelf Air Regulations Update to Include New Jersey State Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New Jersey is the COA. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication in the Federal Register]

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2021-0747** at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212)637-4021, [petriman.viorica@epa.gov](mailto:petriman.viorica@epa.gov).

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#### **I. Background and Purpose**

On September 4, 1992, EPA promulgated 40 CFR part 55 ("Part 55"),<sup>1</sup> which established requirements to control air pollution from Outer Continental Shelf (OCS) sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The Part 55 regulations apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

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<sup>1</sup> The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Section 328(a) of the CAA requires that for such OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements. To comply with this statutory mandate, the EPA must incorporate by reference into Part 55 all relevant state rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One time such a "consistency update" must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA an NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f). This proposed action is being taken in response to the submittal of an NOI on September 14, 2021, by Ocean Wind, LLC, which proposes to submit an OCS permit application for the construction of a new OCS source (a wind energy project) about 15 miles offshore New Jersey.

## **II. The EPA's Evaluation**

In updating 40 CFR part 55, the EPA reviewed the New Jersey Department of Environmental Protection ("NJDEP") air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State AAQS or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. *See* 40 CFR 55.12(e). The EPA has excluded New Jersey's administrative or procedural rules<sup>2</sup>, and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

## **III. The EPA's Proposed Action**

In today's action, the EPA is proposing to update the "New Jersey" section of Appendix A to 40 CFR part 55 to incorporate by reference the following relevant New Jersey air pollution control rules that are currently in effect:

Chapter 27 Subchapter 2 - Control and Prohibition of Open Burning (Effective 6/20/1994),  
N.J.A.C. 7:27-2.1 through 2.4, 7:27-2.6 through 2.8, and 7:27-2.12 through 2.13;

Chapter 27 Subchapter 3 - Control and Prohibition of Smoke from Combustion of Fuel  
(Effective 2/4/2002);

Chapter 27 Subchapter 4 - Control and Prohibition of Particles from Combustion of Fuel  
(Effective 4/20/2009);

Chapter 27 Subchapter 5 - Prohibition of Air Pollution (Effective 10/12/1977);

Chapter 27 Subchapter 6 – Control and Prohibition of Particles from Manufacturing Processes  
(Effective 6/12/1998);

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<sup>2</sup> Each COA, which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in New Jersey, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

Chapter 27 Subchapter 7 – Sulfur (Effective 11/6/2017), N.J.A.C. 7:27-7.1 and 7.2;

Chapter 27 Subchapter 8 – Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit) (Effective 4/6/2020), N.J.A.C. 7:27-8.1 through 8.9, 7:27-8.11 through 8.21, 7:27-8.23 through 8.25, 7:27-8.27, and Appendix 1;

Chapter 27 Subchapter 9 – Sulfur in Fuels (Effective 9/20/2010);

Chapter 27 Subchapter 10 – Sulfur in Solid Fuels (Effective 9/6/2011);

Chapter 27 Subchapter 11 – Incinerators (Effective 5/4/1998);

Chapter 27 Subchapter 12 – Prevention and Control of Air Pollution Emergencies (Effective 5/20/1974);

Chapter 27 Subchapter 16 – Control and Prohibition of Air Pollution by Volatile Organic Compounds (Effective 1/16/2018), N.J.A.C. 7:27-16.1 through 16.10, 7:27-16.12 through 16.13, 7:27-16.16 through 16.23, 7:27-16. 27, and Appendix I and II;

Chapter 27 Subchapter 18 – Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules) (Effective 11/6/2017);

Chapter 27 Subchapter 19 – Control and Prohibition of Air Pollution from Oxides of Nitrogen (Effective 1/16/2018), N.J.A.C. 7:27-19.1 through 19.8, 7:27-19.11, 7:27-19.13 through 19.21, 7:27-19.23, and 7:27-19.25 through 19.26;

Chapter 27 Subchapter 20 – Used Oil Combustion (Effective 9/6/2011);

Chapter 27 Subchapter 21 – Emission Statements (Effective 1/16/2018);

Chapter 27 Subchapter 22 – Operating Permits (Effective 11/2/2020);

Chapter 27B Subchapter 1 – Sampling and Analytical Procedures for Determining Emissions of Particles from Manufacturing Processes and from Combustion of Fuels (Effective 6/21/1976);

Chapter 27B Subchapter 2 – Procedures for Visual Determination of the Opacity (Percent) and Shade or Appearance (Ringelmann Number) of Emissions from Sources (Effective 6/21/1976);

and

Chapter 27B Subchapter 3 – Air Test Method 3: Sampling and Analytical Procedures for the

#### **IV. Incorporation by Reference**

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NJDEP air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III (“The EPA’s Proposed Action”) of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office. Please contact the person identified in the **“For Further Information Contact”** section of this preamble for more information.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states’ seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA’s role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA.

##### **a. Executive Order 12866, Regulatory Planning and Review**

This action is not a “significant regulatory action” under the terms of Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under the EO.

b. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

c. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed consistency update under CAA section 328 will not create any new requirements but simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

d. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate or significantly or uniquely affect small governments as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local or tribal governments.

e. *Executive Order 13132, Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

f. *Executive Order 13175, Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on

the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law. It merely updated the State law incorporated by reference into 40 CFR part 55 to match current State requirements.

g. *Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 and simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

h. *Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use.*

This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

i. *National Technology Transfer and Advancement Act*

This rulemaking is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

j. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health, or environmental effects, using

practicable and legally permissible methods.

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 15, 2021

Walter Mugdan,  
Acting Regional Administrator,  
Region 2.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows.

**PART 55 – [AMENDED]**

1. The authority citation for 40 CFR part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(15)(i)(A) to read as follows:

**§55.14 Requirements that apply to OCS sources located within 25 miles of states’ seaward boundaries, by state.**

\* \* \* \* \*

(e) \* \* \*

(15) \* \* \*

(i) \* \* \*

(A) State of New Jersey Requirements Applicable to OCS Sources, October 6, 2021.

\* \* \* \* \*

3. Appendix A to 40 CFR part 55 is amended by revising the entry for “New Jersey” to read as follows:

**Appendix A to 40 CFR part 55 – Listing of State and Local Requirements Incorporated by Reference Into 40 CFR part 55, by State**

\* \* \* \* \*

NEW JERSEY

(a) State requirements,

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of October 6, 2021. New Jersey State Department of Environmental Protection - New Jersey Administrative Code. The following sections of Title 7:

**Chapter 27 Subchapter 2 - Control and Prohibition of Open Burning (Effective 6/20/1994)**

N.J.A.C. 7:27-2.1. Definitions

N.J.A.C. 7:27-2.2. Open burning for salvage operations

N.J.A.C. 7:27-2.3. Open burning of refuse

N.J.A.C. 7:27-2.4. General provisions

N.J.A.C. 7:27-2.6. Prescribed burning

N.J.A.C. 7:27-2.7. Emergencies

N.J.A.C. 7:27-2.8. Dangerous material

N.J.A.C. 7:27-2.12. Special permit

N.J.A.C. 7:27-2.13. Fees

### **Chapter 27 Subchapter 3 - Control and Prohibition of Smoke from Combustion of Fuel**

**(Effective 2/4/2002)**

N.J.A.C. 7:27-3.1. Definitions

N.J.A.C. 7:27-3.2. Smoke emissions from stationary indirect heat exchangers

N.J.A.C. 7:27-3.3. Smoke emissions from marine installations

N.J.A.C. 7:27-3.4. Smoke emissions from the combustion of fuel in mobile sources

N.J.A.C. 7:27-3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines

N.J.A.C. 7:27-3.6. Stack test

N.J.A.C. 7:27-3.7. Exceptions

### **Chapter 27 Subchapter 4 - Control and Prohibition of Particles from Combustion of Fuel**

**(Effective 4/20/2009)**

N.J.A.C. 7:27-4.1. Definitions

N.J.A.C. 7:27-4.2. Standards for the emission of particles

N.J.A.C. 7:27-4.3. Performance test principle

N.J.A.C. 7:27-4.4. Emissions tests

N.J.A.C. 7:27-4.6. Exceptions

## **Chapter 27 Subchapter 5 - Prohibition of Air Pollution (Effective 10/12/1977)**

N.J.A.C. 7:27-5.1. Definitions

N.J.A.C. 7:27-5.2. General provisions

## **Chapter 27 Subchapter 6 – Control and Prohibition of Particles from Manufacturing Processes (Effective 6/12/1998)**

N.J.A.C. 7:27-6.1. Definitions

N.J.A.C. 7:27-6.2. Standards for the emission of particles

N.J.A.C. 7:27-6.3. Performance test principles

N.J.A.C. 7:27-6.4. Emissions tests

N.J.A.C. 7:27-6.5. Variances

N.J.A.C. 7:27-6.7. Exceptions

## **Chapter 27 Subchapter 7 – Sulfur (Effective 11/6/2017)**

N.J.A.C. 7:27-7.1. Definitions

N.J.A.C. 7:27-7.2. Control and prohibition of air pollution from sulfur compounds

## **Chapter 27 Subchapter 8 – Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit) (Effective 4/6/2020)**

N.J.A.C. 7:27-8.1. Definitions

N.J.A.C. 7:27-8.2. Applicability

N.J.A.C. 7:27-8.3. General provisions

N.J.A.C. 7:27-8.4. How to apply, register, submit a notice, or renew

N.J.A.C. 7:27-8.5. Air quality impact analysis

N.J.A.C. 7:27-8.6. Service fees

N.J.A.C. 7:27-8.7. Operating certificates

N.J.A.C. 7:27-8.8. General permits

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N.J.A.C. 7:27-8.25. Special provisions for pollution control equipment or pollution prevention process modifications

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N.J.A.C. 7:27-9.4. Waiver of air quality modeling

## **Chapter 27 Subchapter 10 – Sulfur in Solid Fuels (Effective 9/6/2011)**

N.J.A.C. 7:27-10.1. Definitions

N.J.A.C. 7:27-10.2. Sulfur contents standards

N.J.A.C. 7:27-10.3. Expansion, reconstruction, or construction of solid fuel burning units

N.J.A.C. 7:27-10.4. Exemptions

N.J.A.C. 7:27-10.5. SO<sub>2</sub> emission rate determinations

## **Chapter 27 Subchapter 11 – Incinerators (Effective 5/4/1998)**

N.J.A.C. 7:27-11.1. Definitions

N.J.A.C. 7:27-11.2. Construction standards

N.J.A.C. 7:27-11.3. Emission standards

N.J.A.C. 7:27-11.4. Permit to construct; certificate to operate

N.J.A.C. 7:27-11.5. Operation

N.J.A.C. 7:27-11.6. Exceptions

## **Chapter 27 Subchapter 12 – Prevention and Control of Air Pollution Emergencies (Effective 5/20/1974)**

N.J.A.C. 7:27-12.1. Definitions

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N.J.A.C. 7:27-18.2. Facilities subject to this subchapter

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## **Chapter 27 Subchapter 19 – Control and Prohibition of Air Pollution from Oxides of Nitrogen (Effective 1/16/2018)**

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N.J.A.C. 7:27-22.4. General application procedures

N.J.A.C. 7:27-22.5. Application procedures for initial operating permits

N.J.A.C. 7:27-22.6. Operating permit application contents

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N.J.A.C. 7:27-22.10. Completeness reviews

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N.J.A.C. 7:27-22.12. EPA comment

N.J.A.C. 7:27-22.13. Final action on an application

N.J.A.C. 7:27-22.14. General operating permits

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N.J.A.C. 7:27-22.16. Operating permit contents

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N.J.A.C. 7:27-22.18. Source emissions testing and monitoring

N.J.A.C. 7:27-22.19. Recordkeeping, reporting and compliance certification

N.J.A.C. 7:27-22.20. Administrative amendments

N.J.A.C. 7:27-22.21. Changes to insignificant source operations

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N.J.A.C. 7:27-22.24A. Reconstruction

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N.J.A.C. 7:27-22.26. MACT and GACT standards

N.J.A.C. 7:27-22.27. Operating scenarios

N.J.A.C. 7:27-22.28A. Emissions trading

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## APPENDIX

### TABLE A

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N.J.A.C. 7:27B-1.1. Definitions

N.J.A.C. 7:27B-1.2. Acceptable test methods

N.J.A.C. 7:27B-1.3. Operating conditions during the test

N.J.A.C. 7:27B-1.4. Sampling facilities to be provided by the person responsible for emissions

N.J.A.C. 7:27B-1.5. Sampling train

N.J.A.C. 7:27B-1.6. Performance test principle

N.J.A.C. 7:27B-1.7. General testing requirements

N.J.A.C. 7:27B-1.8. Required test data

N.J.A.C. 7:27B-1.9. Preparation for sampling

N.J.A.C. 7:27B-1.10. Sampling

N.J.A.C. 7:27B-1.11. Sample recovery

N.J.A.C. 7:27B-1.12. Analysis

N.J.A.C. 7:27B-1.13. Calculations

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**Chapter 27B Subchapter 2 – Procedures for Visual Determination of the Opacity (Percent) and Shade or Appearance (Ringelmann Number) of Emissions from Sources (Effective 6/21/1976)**

N.J.A.C. 7:27B-2.1. Definitions

N.J.A.C. 7:27B-2.2. Acceptable observation methods

N.J.A.C. 7:27B-2.3. Observation principle

N.J.A.C. 7:27B-2.4. General observation requirements

N.J.A.C. 7:27B-2.5. Required observation data

N.J.A.C. 7:27B-2.6. Certification

**REFERENCES**

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**Chapter 27B Subchapter 3 – Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Effective 12/1/2008)**

N.J.A.C. 7:27B-3.1. Definitions

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N.J.A.C. 7:27B-3.4. Sampling facilities

N.J.A.C. 7:27B-3.5. Source operations and applicable test methods

N.J.A.C. 7:27B-3.6. Procedures for the determinations of vapor pressures of a single known

VOC or mixtures of known and/or unknown VOC

N.J.A.C. 7:27B-3.7. Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

N.J.A.C. 7:27B-3.8. Procedures for the direct measurement of volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

N.J.A.C. 7:27B-3.9. Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

N.J.A.C. 7:27B-3.10. Procedures for the determination of volatile organic compounds in surface coating formulations

N.J.A.C. 7:27B-3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)

N.J.A.C. 7:27B-3.12. Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts

N.J.A.C. 7:27B-3.13. Procedures for the determination of leak tightness of gasoline delivery vessels

N.J.A.C. 7:27B-3.14. Procedures for the direct detection of fugitive volatile organic compound leaks

N.J.A.C. 7:27B-3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector

N.J.A.C. 7:27B-3.18. Test methods and sources incorporated by reference.

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